

fibrous tissue within substantially the entire cavity, the cavity having a size about the size of the end surface;

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a vacuum line connected between the connection tube of the applicator and the vacuum pump, said vacuum line drawing contaminants from the cavity through said connection tube; and

a control system mounted to the housing which is selectively operated to provide suction and vibration to the body through the applicator head.

REMARKS

Claims 1-7, and 9 were rejected under 35 U. S. C. 112, second paragraph, as being indefinite. Claim 1 was rejected under 35 USC 102(b.) as being clearly anticipated by Holt. Claims 2 and 3 were rejected under 35 U.S.C. 103 as being unpatentable over Holt. Claims 4 and 5 were rejected under 35 U.S.C. 103 as being unpatentable over Holt in view of Howerin. Claims a 6,7,9 and 15 - 18 were rejected under 35 U.S.C. 103 as being unpatentable over Holt in view of Marshall and Rohrer. The claims are amended to correct the formal deficiencies noted by the Examiner. In particular, claim 1 is amended according to the suggestion made by the Examiner. Claim 15 also is amended to correspond to that suggestion. The remaining claims of the application depend from the independent claims and are allowable with the independent claims.

Claims 1 and 15 now both require an applicator having an end surface, the applicator having a concave shaped cavity formed in that end surface. In addition, the cavity is defined as having a size that is substantially or about the size of the end surface. Applicant's invention is a device which is useful in a body massage and in particular, for the reduction of cellulite in the human body. In order to perform that function, relatively

large portions of the body are worked. Nothing in the Holt's description or drawings shows a device that can give applicants result, or shows applicants structure, whether Holt is considered alone or in combination with any of the other references relied upon by the examiner. Holt, in a figure 2, shows an applicator which cannot possibly be used to draw and stretch the fibrous tissue of the human body within the cavity is required in the claims 1 and 15. In addition, claims 1 and 15 require that the connection tube element be capable of applying at least a partial vacuum to the cavity in the applicator so as to draw and stretch fibrous tissue of the human body into the cavity. The construction of the applicator as shown in Holt prevents a similar result from happening. Holt has a plurality of projections 25 which prevented large areas of the human body from either a being drawn into the cavity as required by applicants claims, or from being useful in the kind of massage applicant's invention provides.

In addition, contrary to the examiner's assertions, Holt specifically states "By using the vibrator in the ordinary manner, dead skin, black kids and other objectionable material will be loosened, while the section provided will remove the loosened material in draw the same inward through the openings 26 and 23. The plate 28 will prevent this maternal from being drawn into the air passage, the said material being collected within the cup-shaped holder 20. The applicator 25 and shell 21 may thereafter be removed in the device thoroughly cleaned." (Holt Column 2, lines 55-69.) In view all of this specific recitation in Holt, it is improper for the examiner to modify the structure to a fashioned a rejection as the examiner has done here by stating that "While the plate 28 is adapted to stop most contaminants there will inevitably be contaminants that the plate does not stop. Moreover, if the plate is overloaded, contaminants will pass around plate 28. Therefore,

the tube is adapted to pass contaminants should they get past plate 28." It is a difficult to envision a more improper use of applicant's specification to modify the structure specifically shown in the prior art in order to fashion a rejection based on that art. Nowhere does Holt show or describe or intimate the modification made by the examiner to reject the claims. The claims distinguish over Holt, whether Holt is considered singly or in combination with any of the art. In view of Holt's specific description of its operation, it is improper for the examiner to use the hindsight of applicant's specification to fashion a "might have been" rejection based on Holt.

This amendment does not require any of further research or work on the part of the patent office. The claims merely correct the formal deficiencies noted by the examiner and places the claims in better form for appeal, or in condition for allowance. Entrance of the amendment, a loss of the claims and passage advocate claims to issue are respectfully requested.

Respectfully submitted,



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April 5, 2002
Date of Signature



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: James V. Young

GROUP ART UNIT: 3764

SERIAL NO.: 09/176,866

EXAMINER: DeMille, D.

FILED: October 22, 1998

DOCKET NO.: PHYS 6996US

FOR: MASSAGE APPARATUS

St. Louis, Missouri
April 5, 2002

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Commissioner for Patents
Washington, D.C. 20231

AMENDMENT AFTER FINAL
Version With Markings To Show Changes Made

IN THE CLAIMS:

1. (Thrice Amended) A massage apparatus for massaging a human body,
comprising;

a housing;

a motor associated with said housing;

a drive cable operatively connected to said motor;

a massage head driven by said motor through said cable, said motor imparting
mechanical oscillations to said massage head;

an applicator removably mounted to said massage head for transferring the
mechanical oscillations to the body, said applicator head further having a cavity formed
in the end surface of the applicator for permitting skin to be drawn inwardly of the cavity,
the cavity being substantially the size of the ^[applicator] end surface ^[surface] [formed in the applicator for
permitting skin to be drawn inwardly of the applicator], and a connection tube [integrally]

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formed in said applicator, said tube communicating with said cavity, said connection tube capable of applying at least a partial vacuum to the cavity so as to draw and stretch fibrous tissue of the human body within the cavity, said connection tube being removable with said applicator and adapted to pass contaminants from the cavity;

a vacuum pump associated with said housing; and

a connection between said vacuum pump and said applicator to impart at least a partial vacuum in the cavity of the applicator so that placement of the head on a human body results in the application of a force combination of mechanical oscillation and suction, said connection including a suction line carried externally of said drive cable, said suction line having a first end operatively connected to said vacuum pump and a second end operatively attached to said connector tube, said suction line drawing contaminants from the cavity through said connection tube.

15. (Thrice Amended) A therapy massage device comprising:

a housing;

a motor mounted to the housing;

a vacuum pump mounted to the housing;

a drive cable operatively connected to the motor;

a massage head operatively driven by the cable;

an applicator removably mounted to the massage head, said applicator having a concave shaped cavity formed in an end surface of it, and a connection tube attached to said applicator head in operative communication with the cavity, said connection tube capable of applying at least a partial vacuum to the cavity so as to draw and stretch

fibrous tissue within substantially the entire cavity, the cavity having a size about the size of the end surface [and adapted to pass contaminants from the cavity];

a vacuum line connected between the connection tube of the applicator and the vacuum pump, said vacuum line drawing contaminants from the cavity through said connection tube; and

a control system mounted to the housing which is selectively operated to provide suction and vibration to the body through the applicator head.